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C O N F I D E N T I A L THE HAGUE 002779

SIPDIS

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TAGS: [PREL](#) [PGOV](#) [KAWC](#) [CG](#)

SUBJECT: ICC: CHIEF PROSECUTOR ON COOPERATION; CONGO/ITURI INVESTIGATION

REF: A. THE HAGUE 1806

[1](#)B. THE HAGUE 1837

Classified by Legal Counselor Clifton M. Johnson for reasons 1.5(b) and (d).

[1](#)1. (C) Summary: In a presentation to a regular monthly gathering of diplomats resident in The Hague on October 27, International Criminal Court (ICC) Chief Prosecutor Luis Moreno-Ocampo outlined his main objectives, largely repeating statements he has made since taking the job last spring. Ocampo also expressed his belief that the United States would prevent the United Nations Security Council from taking any steps to help the ICC investigate crimes committed in the Ituri region of the Democratic Republic of Congo (DRC), his first investigative interest. End summary.

[1](#)2. (SBU) ICC Chief Prosecutor Ocampo did not stray from the views he and his staff have expressed since he joined the ICC (see reftels). In his presentation on October 27, two familiar themes predominated: First, Ocampo emphasized his view that the ICC's principal function is to ensure that domestic criminal justice systems handle crimes within their jurisdictions. He reiterated that the ICC should be seen as a success if national jurisdictions are preventing and prosecuting crimes. Second, Ocampo made clear that the constraints on the ICC weigh heavily on his freedom of action, if not his independence. Thus, while noting that &I am not a diplomat or a politician& and will pursue cases that warrant ICC investigation, he also made clear that he depends on governments and other organizations to cooperate in his investigations. Limited resources, to his mind, also mean that he must focus his investigative energies on the leadership tier of those responsible for the crimes within the ICC's jurisdiction, leaving to national jurisdictions the responsibility to pursue lower level perpetrators.

[1](#)3. (SBU) Ocampo used the example of his first investigative interest ) Ituri, DRC ) to demonstrate how he sees the Rome Statute working. He explained, as noted in ref B, that he received hundreds of communications related to alleged crimes, many of which (such as those involving Iraq) were outside his jurisdiction. Serious allegations, however, arose from communications regarding Ituri. While no state referred specific crimes to his office, as States Parties may do under the Rome Statute, Ocampo believed that the allegations were serious enough to warrant his office's examination. Moreover, he added, Ituri presents &a clear case& where the national authority is &unable& (as the Rome Statute provides) to prevent crimes, control its territory or prosecute offenses. Indeed, Ocampo noted, the DRC welcomed ICC review, and he is hopeful that the DRC will eventually refer the Ituri situation to him for investigation. Otherwise, he may launch an investigation on the basis of his own "proprio motu" powers under the Rome Statute). Ocampo underscored that he still needs the support of states to enable him to conduct investigations. He emphasized that he was looking for support from States Parties to the Rome States as well as international organizations, focusing his appeal on African states and organizations. He is also interested in the actions of actors outside the DRC, such as financial backers of the armed groups who may be based in Europe. He expressed his hope that such governments would investigate these financiers on their own.

[1](#)4. (C) During a Q-and-A session, Ocampo was asked whether he could obtain the cooperation of the UN Security Council in his investigations. He replied that he had &no chance& of securing support from the Security Council for assisting in ICC investigations because &the United States will veto& such efforts. While he &respects the U.S. decision not to sign& the Rome Statute and &understands the argument (against UN financial commitment) that the United States pays 25 percent of the UN's bills&, he said that &stopping the UN from helping (the ICC investigate crimes in Ituri) could do real damage& to the ICC and the DRC. "If the U.S. blocks the UN from helping the ICC (in the DRC)," he said, "it could cost lives." While Ocampo did not elaborate on the kind of UN assistance he had in mind, he made clear that he would be looking for help from others, especially the African Union.

[1](#)5. (C) Comment: Ocampo has stuck with his message since assuming the post of ICC chief prosecutor, taking on a tone

of an optimistic, pragmatic, and determined prosecutor.  
Recognizing his inability to obtain Security Council  
assistance for his investigations, he signaled his intent to  
pursue such help in other international fora. End comment.  
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